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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

SPENCER NEAL,

Plaintiff,

vs.

DIVYADRASHTI LLC,

&

D MART,

Defendants.

**Case No.:**  
**Civil Rights**

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES:**

**1<sup>ST</sup> CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of the Americans with Disability Act  
of 1990 ("title III" and "ADA"), 42. U.S.C. §§  
12181 *et seq.*

**2<sup>ND</sup> CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of Ohio Revised Code § 4112.02, *et  
seq.*

**3<sup>RD</sup> CAUSE OF ACTION:** For Denial of  
Access by a Public Accommodation in  
Violation of Ohio Administrative Code §  
4101:1-11, *et sec.*

**DEMAND FOR JURY**

Plaintiff SPENCER NEAL Complains of Defendants DIVYADRASHTI LLC and D  
MART, and alleges as follows:

**INTRODUCTION:**

1. This is a civil rights action for discrimination against persons with physical

1 disabilities, of which plaintiff SPENCER NEAL is a member of, for failure to remove  
 2 architectural barriers structural in nature at Defendants' D MART, a place of public  
 3 accommodation, thereby discriminatorily denying plaintiff access to, the full and equal  
 4 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and  
 5 accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans  
 6 with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised  
 7 Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

9           2.       Plaintiff SPENCER NEAL is a person with physical disabilities who, on or  
 10 about September 23, 2017, was an invitee, guest, patron, or customer at Defendants' D MART,  
 11 in the City of Akron, Ohio. At said time and place, defendant failed to provide proper legal  
 12 access to D MART, "which is a public accommodation" and/or a "public facility". The denial of  
 13 access was in violation of both federal and Ohio legal requirements, and plaintiff SPENCER  
 14 NEAL suffered violation of his civil rights to full and equal access, and was embarrassed and  
 15 humiliated.  
 16  
 17

#### 18 **JURISDICTION AND VENUE:**

19           3.       **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
 20 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
 21 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
 22 nucleus of operative facts and arising out of the same transactions, are also brought under  
 23 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to  
 24 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,  
 25 *et sec.*  
 26

27           4.       **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
 28

1 founded on the facts that the real property which is the subject of this action is located in this  
2 district at/near 2424 Massillon Rd., in the City of Akron, County of Summit, State of Ohio and  
3 that plaintiff's causes of action arose in this district.  
4

5 **PARTIES:**

6 5. Plaintiff SPENCER NEAL is a "physically handicapped person," a "physically  
7 disabled person," and a "person with physical disabilities." (Hereinafter the terms "physically  
8 disabled," "physically handicapped" and "person with physical disabilities" are used  
9 interchangeably, as these words have similar or identical common usage and legal meaning.)  
10 Plaintiff SPENCER NEAL is a "person with physical disabilities," as defined by all applicable  
11 Ohio and United States laws. Plaintiff requires the use of a wheelchair to travel about in public.  
12 Consequently, plaintiff SPENCER NEAL is a member of that portion of the public whose rights  
13 are protected by the provisions of Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative  
14 Code § 4101:1-11, *et sec.*  
15

16 6. Defendants DIVYADRASHTI LLC, a for-profit Ohio limited liability company and  
17 D MART, an unknown entity, (hereinafter alternatively referred to as "Defendants") are the  
18 owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees,  
19 and/or alter ego, franchisor and/or franchisee, of the building and/or buildings which constitute a  
20 public facility in and of itself, occupied by D MART, a public accommodation, located at/near  
21 2424 Massillon Rd., Akron, Ohio, and subject to the requirements of Ohio state law requiring  
22 full and equal access to public facilities pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio  
23 Administrative Code § 4101:1-11, *et sec.*, and subject to the Americans with Disability Act of  
24 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal requirements  
25 referred to in this complaint.  
26  
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28

7. At all times relevant to this complaint, Defendants are the lessee, or agent of the lessees, and/or lessors, of said premises, and/or alter ego of the lessees, lessors and their agents, and owns and operates in joint enterprise the subject D MART as a public facility at/near 2424 Massillon Rd., Akron, Ohio. This business is open to the general public and conducts business therein. The business operating on said premises is a “public accommodation” subject to the requirements of Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code § 4101:1-11, *et sec.* Plaintiff does not know the relative responsibilities of the defendant in the operation of the facilities herein complained of, and alleges a joint venture and common enterprise by all such Defendants.

8. At all times relevant to this complaint, Defendants are the landlords/lessors, tenants/lessees and the owners and operators of the subject D MART, a public accommodation located at/near 2424 Massillon Rd., Akron, Ohio. As such, Defendants are jointly and severally responsible to identify and remove architectural barriers pursuant to Code of Federal Regulations section 36.201(b), which states in pertinent part:

**§ 36.201      General**

(b) Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

CFR §36.201(b)

9. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, nor their relative responsibilities in causing

1 the access violations herein complained of, and allege a joint venture and common enterprise by  
 2 all such Defendants. Plaintiff is informed and believes that the Defendants herein is a public  
 3 accommodation, and is the agent, ostensible agent, master, servant, employer, employee,  
 4 representative, franchisor, franchisee, joint venturer, alter ego, partner, and associate, or such  
 5 similar capacity, of each of the other Defendants, and was at all times acting and performing, or  
 6 failing to act or perform, within the course and scope of his, her or its authority as agent,  
 7 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,  
 8 joint venturer, alter ego, partner, and associate, or such similar capacity, and with the  
 9 authorization, consent, permission or ratification of each of the other Defendants, and is  
 10 responsible in some manner for the acts and omissions of the other Defendants in legally causing  
 11 the violations and damages complained of herein, and have approved or ratified each of the acts  
 12 or omissions of each other defendant, as herein described. Plaintiff will seek leave to amend  
 13 when the true names, capacities, connections, and responsibilities of Defendants are ascertained.

14  
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 16  
 17 10. Plaintiff is informed and believes that the named Defendants conspired to commit  
 18 the acts described herein, or alternatively, aided and abetted one another in the performance of  
 19 the wrongful acts hereinafter alleged.

20 **PRELIMINARY FACTUAL ALLEGATIONS:**

21  
 22 11. Defendants are the private person and/or entity that is a public accommodation that  
 23 owns, leases (or leases to), or operates D MART, an entertainment facility, located at/near 2424  
 24 Massillon Rd., Akron, Ohio. D MART and each of its facilities are places “of public  
 25 accommodation” subject to the requirements of the Americans with Disability Act of 1990  
 26 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*;  
 27 and Ohio Administrative Code § 4101:1-11, *et sec.* On information and belief, said facility has

1 undergone “alterations, structural repairs and additions,” each of which has subjected D MART  
2 to handicapped access requirements.

3 12. Plaintiff SPENCER NEAL is a person with a disability. Plaintiff SPENCER NEAL is  
4 a “physically disabled person,” as defined by all applicable Ohio and United States laws.  
5 Plaintiff SPENCER NEAL requires the use of wheelchair for mobility and to travel in public.  
6

7 13. At all times referred to herein and continuing to the present time, Defendants  
8 advertised, publicized and held out the D MART as being handicapped accessible and  
9 handicapped usable.

10 14. On or about September 23, 2017, plaintiff SPENCER NEAL was an invitee and guest  
11 at the subject D MART, arriving for purposes of purchasing goods.  
12

13 15. On or about September 23, 2017, plaintiff SPENCER NEAL upon entering the  
14 parking lot noticed no designated accessible parking spaces on the shortest accessible route and  
15 no signage designating handicapped accessible parking.  
16





1           16. On or about September 23, 2017, plaintiff SPENCER NEAL attempted to gain access  
2 to the establishment and noticed that there was no accessible route to enter the facility. A large  
3 and cracked curb with soil and vegetation had to be traversed to gain entry to the facility. A  
4 parking lot and walkway with severely cracked and uneven pavement made SPENCER NEAL's  
5 trek from a non-accessible parking space to D MART's front door extremely difficult. Multiple  
6 obstructions in D Mart's walkway prevented plaintiff from safely reaching the entrance. In  
7 traversing the curb and the parking lot, SPECER NEAL strained and injured his shoulders.  
8





17. Therefore, at said time and place, plaintiff SPENCER NEAL, a person with a disability, encountered the following inaccessible elements of the subject D MART which constituted architectural barriers and a denial of the proper and legally required access to a public accommodation to persons with physical disabilities including, but not limited to:

- a. lack of designated handicapped accessible parking along the shortest accessible route;
- b. lack of signage designating handicapped accessible parking, including, but not limited to, van accessible parking, tow-away and fine signs;
- c. lack of an accessible route to the entrances of the establishment;
- d. severe cracked and uneven pavement and curbs;
- e. lack of or inadequately defined policies and procedures for the assistance of disabled patrons;



1 f. on personal knowledge, information and belief, other public facilities and  
2 elements too numerous to list were improperly inaccessible for use by  
3 persons with physical disabilities.  
4

5 18. The discriminatory violations described in ¶ 17 are not an exclusive list of the  
6 Defendants' violations. Plaintiff SPENCER NEAL requires the inspection of the Defendants'  
7 place of public accommodation in order to photograph and measure all of the discriminatory acts  
8 violating the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§  
9 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11,  
10 *et sec.*  
11

12 19. At all times stated herein, the existence of architectural barriers at Defendants'  
13 place of public accommodation evidenced "actual notice" of Defendants' intent not to comply  
14 with the Americans with Disability Act of 1990 ("title III" and "ADA"), 42. U.S.C. §§ 12181 *et*  
15 *seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*  
16 either then, now or in the future.  
17

18 20. As a legal result of Defendants' failure to act as a reasonable and prudent public  
19 accommodation in identifying, removing or creating architectural barriers, policies, practices and  
20 procedures that denied access to plaintiff and other persons with disabilities, plaintiff suffered  
21 damages as alleged herein.  
22

23 21. As a further legal result of the actions and failure to act of defendant, and as a  
24 legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
25 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff  
26 SPENCER NEAL suffered a loss of his civil rights and his rights as a person with physical  
27 disabilities to full and equal access to public facilities, and further suffered from injury, shame,  
28

1 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally  
2 associated with a person with physical disabilities being denied access, all to his damages as  
3 prayed hereinafter in an amount within the jurisdiction of this court.  
4

5 22. Plaintiff SPENCER NEAL is “physically handicapped,” “physically disabled,” or a  
6 “person with physical disabilities” who was denied his rights to equal access to a public facility  
7 by Defendants. Defendants maintained a public establishment without access for persons with  
8 physical disabilities to its parking lot and other public areas as stated herein, and continues to the  
9 date of filing this complaint to deny equal access to plaintiff and other persons with physical  
10 disabilities in these and other ways.  
11

12 23. On information and belief, construction alterations carried out by Defendants have  
13 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND  
14 “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio  
15 Administrative Code §4101:1-11, *et sec.*  
16

17 24. Plaintiff, as described herein below, seeks injunctive relief to require the  
18 D MART to be made accessible to meet the requirements of both Ohio law and the Americans  
19 with Disabilities Act, whichever is more restrictive, so long as Defendants operates and/or lease  
20 the D MART as a public facility. Plaintiff seeks damages for violation of his civil rights, from  
21 September 23, 2017 until such date as defendant brings the establishment into full compliance  
22 with the requirements of Ohio and federal law. To encourage defendant to bring the  
23 establishment into compliance with the law, plaintiff also seeks daily damages of not less than  
24 \$1,000/day for each day after his visit until such time as the D MART is made fully accessible to  
25 plaintiff and to other persons with physical disabilities.  
26

27 25. On information and belief, Defendants have been negligent in its affirmative duty to  
28

1 identify the architectural barriers complained of herein and negligent in the removal of some or  
2 all of said barriers.

3         26. Because of Defendants' violations, plaintiff and other persons with physical  
4 disabilities are unable to use public facilities such as those owned and operated by Defendants on  
5 a "full and equal" basis unless such facility is in compliance with the provisions of the  
6 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an  
7 order from this court compelling Defendants to make the D MART accessible to persons with  
8 disabilities.  
9

10         27. On information and belief, Defendants have intentionally undertaken to modify and  
11 alter existing building(s), and have failed to make them comply with accessibility requirements.  
12 The acts and omission of Defendants in failing to provide the required accessible public facilities  
13 at the time of plaintiff's visit and injuries, indicate actual and implied malice towards plaintiff,  
14 and despicable conduct carried out by Defendants with a willful and conscious disregard for the  
15 rights and safety of plaintiff and other similarly situated persons, and justify punitive damages  
16 pursuant to Ohio Revised Code § 2315.21, in amounts sufficient to make a more profound  
17 example of Defendants to other operators of other establishment and other public facilities, and  
18 to punish Defendants and to carry out the purposes of § 2315.21.  
19

20         28. Plaintiff is informed and believes and therefore alleges that Defendants caused the  
21 subject building(s) to be constructed, altered and maintained in such a manner that persons with  
22 physical disabilities were denied full and equal access to, within and throughout said building(s)  
23 of the D MART and were denied full and equal use of said public facilities. Further, on  
24 information and belief, defendant has continued to maintain and operate said D MART and/or its  
25 building(s) in such conditions up to the present time, despite actual and constructive notice to  
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1 such Defendants that the configuration of the establishment and/or its building(s) is in violation  
2 of the civil rights of persons with physical disabilities, such as plaintiff SPENCER NEAL and  
3 the disability community. Such construction, modification, ownership, operation, maintenance  
4 and practices of such public facilities are in violation of law as stated in Americans with  
5 Disability Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.* and elsewhere in  
6 the laws of Ohio.  
7

8         29. On information and belief, the subject public facilities and building(s) of  
9 D MART denied full and equal access to plaintiff and other persons with physical disabilities in  
10 other respects due to noncompliance with requirements of Ohio Revised Code § 4112.02, *et seq.*,  
11 and Ohio Administrative Code §4101:1-11, *et sec.*  
12

13         30. On personal knowledge, information and belief, the basis of Defendants' actual  
14 and constructive notice that the physical configuration of the facilities including, but not limited  
15 to, architectural barriers constituting the D MART and/or building(s) was in violation of the civil  
16 rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to,  
17 communications with invitees and guests, owners of other establishments and businesses, notices  
18 Defendants obtained from governmental agencies upon modification, improvement, or  
19 substantial repair of the subject premises and other properties owned by this Defendants,  
20 newspaper articles and trade publications regarding the Americans with Disabilities Act and  
21 other access laws, public service announcements, and other similar information. Defendants'  
22 failure, under state and federal law, to make the establishment accessible is further evidence of  
23 Defendants' conscious disregard for the rights of plaintiff and other similarly situated persons  
24 with disabilities. The scope and means of the knowledge of Defendants are within Defendants'  
25 exclusive control and cannot be ascertained except through discovery. Despite being informed of  
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1 such effect on plaintiff and other persons with physical disabilities due to the lack of accessible  
2 facilities, Defendants knowingly and willfully refused to take any steps to rectify the situation  
3 and to provide full and equal access for plaintiff and other persons with physical disabilities to  
4 the establishment. Said Defendants have continued such practices, in conscious disregard for the  
5 rights of plaintiff and other persons with physical disabilities, up to the date of filing of this  
6 complaint, and continuing thereon. Defendants have further actual knowledge of the architectural  
7 barriers referred to herein by virtue of the demand letter addressed to the Defendants and served  
8 concurrently with the complaint. Said conduct, with knowledge of the effect it was and is having  
9 on plaintiff and other persons with physical disabilities, constitutes despicable conduct in  
10 conscious disregard of the rights and safety of plaintiff and of other similarly situated persons,  
11 justifying the imposition of punitive damages.

14 31. Punitive Damages -- Defendants, at times prior to and including September 23, 2017  
15 and continuing to the present time, knew that persons with physical disabilities were denied their  
16 rights of equal access to all portions of this public facility. Despite such knowledge, Defendants  
17 failed and refused to take steps to comply with the applicable access statutes; and despite  
18 knowledge of the resulting problems and denial of civil rights thereby suffered by plaintiff and  
19 other similarly situated persons with disabilities, including the specific notices referred to in  
20 paragraph 30 of this complaint. Defendants have failed and refused to take action to grant full  
21 and equal access to persons with physical disabilities in the respects complained of hereinabove.  
22 Defendants have carried out a course of conduct of refusing to respond to, or correct complaints  
23 about, denial of handicap access and has refused to comply with its legal obligations to make D  
24 MART accessible pursuant to the Americans with Disabilities Act and Ohio law. Such actions  
25 and continuing course of conduct by Defendants evidence despicable conduct in conscious  
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1 disregard for the rights or safety of plaintiff and of other similarly situated persons, justifying an  
2 award of punitive damages.

3 32. Defendants' actions have also been oppressive to persons with physical  
4 disabilities and of other members of the public, and have evidenced actual or implied malicious  
5 intent toward those members of the public, such as plaintiff and other persons with physical  
6 disabilities who have been denied the proper access they are entitled to by law. Further,  
7 Defendants' refusals on a day-to-day basis to remove the barriers complained of herein evidence  
8 despicable conduct in conscious disregard for the rights of plaintiff and other members of the  
9 public with physical disabilities.  
10

11 33. Plaintiff prays for an award of punitive damages against Defendants in an amount  
12 sufficient to make a more profound example of Defendants and discourage owners and operators  
13 of other establishments, and other public facilities, from willful disregard of the rights of persons  
14 with physical disabilities. Plaintiff does not know the financial worth of Defendants and seeks  
15 leave to amend this complaint when such facts are known.  
16

17 34. Plaintiff SPENCER NEAL, would, could and will return to the subject public  
18 accommodation when it is made accessible to persons with disabilities.  
19

20 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**  
21 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
22 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

23 35. Plaintiff pleads and incorporate by reference, as if fully set forth again herein,  
24 the allegations contained in paragraphs 1 through 34 of this complaint.

25 36. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.  
26 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully  
27 protect:  
28

1 some 43 million Americans with one or more physical or mental  
 2 disabilities; [that] historically society has tended to isolate and  
 3 segregate individuals with disabilities; [that] such forms of  
 4 discrimination against individuals with disabilities continue to be a  
 5 serious and pervasive social problem; [that] the nation's proper  
 6 goals regarding individuals with disabilities are to assure equality  
 7 of opportunity, full participation, independent living and economic  
 8 self-sufficiency for such individuals; [and that] the continuing  
 existence of unfair and unnecessary discrimination and prejudice  
 denies people with disabilities the opportunity to compete on an  
 equal basis and to pursue those opportunities for which our free  
 society is justifiably famous.

9 37. Congress stated as its purpose in passing the Americans with Disabilities Act of  
 10 1990 (42 U.S.C. §12102):

11 It is the purpose of this act (1) to provide a clear and  
 12 comprehensive national mandate for the elimination of  
 13 discrimination against individuals with disabilities; (2) to provide  
 14 clear, strong, consistent, enforceable standards addressing  
 15 discrimination against individuals with disabilities; (3) to ensure  
 16 that the Federal government plays a central role in enforcing the  
 17 standards established in this act on behalf of individuals with  
 18 disabilities; and (4) to invoke the sweep of Congressional  
 authority, including the power to enforce the 14th Amendment and  
 to regulate commerce, in order to address the major areas of  
 discrimination faced day to day by people with disabilities.

19 38. As part of the Americans with Disabilities Act of 1990, (hereinafter the "ADA"),  
 20 Congress passed "Title III - Public Accommodations and Services Operated by Private Entities"  
 21 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for  
 22 purposes of this title was:

23 (7) PUBLIC ACCOMMODATION - The following private  
 24 entities are considered public accommodations for purposes of this  
 title, if the operations of such entities affect commerce -

25 . . .

26 (B) an entertainment facility, bar, or other establishment serving food or drink;

27 42 .S.C. §12181(7)(B).

28 39. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated  
 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 15

1 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
2 privileges, advantages, or accommodations of any place of public accommodation by any person  
3 who owns, leases, or leases to, or operates a place of public accommodation.”  
4

5 40. The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
6 42 U.S.C. §12182(b)(2)(a) are:

7 (i) the imposition or application of eligibility criteria  
8 that screen out or tend to screen out an individual with a disability  
9 or any class of individuals with disabilities from fully and equally  
10 enjoying any goods, services, facilities, privileges, advantages, or  
11 accommodations, unless such criteria can be shown to be  
12 necessary for the provision of the goods, services, facilities,  
13 privileges, advantages, or accommodations being offered;

12 (ii) a failure to make reasonable modifications in  
13 policies, practices, or procedures, when such modifications are  
14 necessary to afford such goods, services, facilities, privileges,  
15 advantages or accommodations to individuals with disabilities,  
16 unless the entity can demonstrate that making such modifications  
17 would fundamentally alter the nature of such goods, services,  
18 facilities, privileges, advantages, or accommodations;

17 (iii) a failure to take such steps as may be necessary to  
18 ensure that no individual with a disability is excluded, denied  
19 services, segregated or otherwise treated differently than other  
20 individuals because of the absence of auxiliary aids and services,  
21 unless the entity can demonstrate that taking such steps would  
22 fundamentally alter the nature of the good, service, facility,  
23 privilege, advantage, or accommodation being offered or would  
24 result in an undue burden;

22 (iv) a failure to remove architectural barriers, and  
23 communication barriers that are structural in nature, in existing  
24 facilities . . . where such removal is readily achievable; and

24 (v) where an entity can demonstrate that the removal of  
25 a barrier under clause (iv) is not readily achievable, a failure to  
26 make such goods, services, facilities, privileges, advantages or  
27 accommodations available through alternative methods if such  
28 methods are readily achievable.

28 The acts of Defendants set forth herein were a violation of plaintiff's rights under the ADA, 42.  
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1 U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §  
2 4101:1-11, *et sec.*, making available damage remedies.

3 41. The removal of the barriers complained of by plaintiff as hereinabove alleged  
4 was at all times after January 26, 1992 “readily achievable” as to the subject building(s) of D  
5 MART pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal  
6 of all the barriers complained of herein together was not “readily achievable,” the removal of  
7 each individual barrier complained of herein was “readily achievable.” On information and  
8 belief, Defendants’ failure to remove said barriers was likewise due to discriminatory practices,  
9 procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182  
10 (b)(2)(A)(i).  
11

12 42. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily  
13 accomplishable and able to be carried out without much difficulty or expense.” The statute  
14 defines relative “expense” in part in relation to the total financial resources of the entities  
15 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that  
16 plaintiff complains of herein were and are “readily achievable” by the Defendants under the  
17 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not  
18 “readily achievable” for Defendants to remove each of such barriers, Defendants have failed to  
19 make the required services available through alternative methods which were readily achievable.  
20

21 43. On information and belief, construction work on, and modifications of, the  
22 subject building(s) of the D MART occurred after the compliance date for the Americans with  
23 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III  
24 of the ADA.  
25

26 44. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
27

1 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil  
2 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on  
3 the basis of disability in violation of this title or have reasonable grounds for believing that  
4 plaintiff is about to be subjected to discrimination in violation of §302. Plaintiff cannot  
5 return to or make use of the public facilities complained of herein so long as the premises and  
6 Defendants' policies bar full and equal use by persons with physical disabilities.  
7

8 45. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person  
9 with a disability to engage in a futile gesture if such person has actual notice that a person or  
10 organization covered by this title does not intend to comply with its provisions." Pursuant to this  
11 last section, plaintiff SPENCER NEAL has not returned to Defendants' premises since on or  
12 about September 23, 2017, but on information and belief, alleges that Defendants have continued  
13 to violate the law and deny the rights of plaintiff and of other persons with physical disabilities to  
14 access this public accommodation. Pursuant to §308(a)(2), "In cases of violations of  
15 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such  
16 facilities readily accessible to and usable by individuals with disabilities to the extent required by  
17 this title."  
18

19  
20 46. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights  
21 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement  
22 the Americans with Disabilities Act of 1990, including but not limited to an order granting  
23 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being  
24 deemed to be the prevailing party.  
25

26 47. Plaintiff seek damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and  
27 Ohio Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that  
28



1 a violation of the ADA and/or Ohio's accessibility standards is a violation of Ohio law.

2 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

3 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**  
4 **IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

5 48. Plaintiff repleads and incorporates by reference as if fully set forth again herein,  
6 the allegations contained in paragraphs 1 through 47 of this complaint.

7  
8 49. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided  
9 that persons with physical disabilities are not to be discriminated against because of physical  
10 handicap or disability. This section provides that:

11 It shall be an unlawful discriminatory practice:

12 (G) For any proprietor or any employee, keeper, or manager of a place of  
13 public accommodation to deny to any person, except for reasons  
14 applicable alike to all persons regardless of race, color, religion, sex,  
15 military status, national origin, disability, age, or ancestry, the full  
16 enjoyment of the accommodations, advantages, facilities, or privileges of  
the place of public accommodation.

17 50. D MART and the business therein, are "places of public accommodation"  
18 pursuant to Ohio Revised Code § 4112.01(A)(9).

19 51. Defendants committed an unlawful act pursuant to Ohio Revised Code §  
20 4112.02(G) by denying plaintiff SPENCER NEAL full enjoyment of its accommodations,  
21 advantages, facilities, or privileges, whereas, plaintiff SPENCER NEAL had great difficulty  
22 entering the property due to extensive barriers for patrons confined to wheelchairs on the  
23 accessible route.

24  
25 52. Pursuant to Ohio Revised Code § 4112.99, plaintiff SPENCER NEAL is  
26 entitled to compensatory and punitive damages, and attorney fees and costs, in an amount to be  
27 determined at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction

1 requiring defendant to allow full and equal enjoyment of its goods, services, facilities, privileges,  
2 and advantages to disabled persons.

3 53. A separate act in violation of Ohio Revised Code § 4112.02(G) has been  
4 committed each day that Defendants act or fail to act and/or knowingly and willfully fails and  
5 refuse to remove each architectural barrier or policy and procedure barrier presently existing at  
6 the subject public accommodation which denies full and equal access for persons with physical  
7 disabilities to said building(s), elements and facilities of D MART. Plaintiff has been denied full  
8 and equal access on an ongoing basis since the date of plaintiff SPENCER NEAL' first visit. As  
9 a legal result, plaintiff is entitled to seek appropriate relief, such as damages, pursuant to Ohio  
10 Revised Code § 4112.99.  
11

12 54. On or about September 23, 2017, plaintiff SPENCER NEAL suffered violations  
13 of Ohio Revised Code § 4112.02(G) in that plaintiff SPENCER NEAL was denied access to the  
14 parking and other public facilities as stated herein at the D MART and on the basis that plaintiff  
15 SPENCER NEAL was a person with physical disabilities.  
16

17 55. As a result of the denial of equal access to Defendants' facilities due to the acts  
18 and omissions of Defendants in owning, operating and maintaining these subject public facilities,  
19 plaintiff suffered violations of his civil rights, as well as suffering from injury, shame,  
20 humiliation, embarrassment, frustration, anger, chagrin, disappointment and worry, all of which  
21 are expectedly and naturally associated with a denial of access to a person with physical  
22 disabilities, all to plaintiff's damages as hereinafter stated.  
23

24 56. Plaintiff has been damaged by Defendants' wrongful conduct and seeks the relief  
25 that is afforded by Ohio Revised Code § 4112 for violation of plaintiff's rights as a person,  
26 including statutory damages according to proof.  
27

1           57. As a result of Defendants' acts and omissions in this regard, plaintiff has been  
2 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and  
3 enforce the provisions of the law protecting access for persons with physical disabilities and  
4 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions  
5 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all  
6 reasonable attorneys' fees and costs incurred if deemed the prevailing party.  
7

8           Wherefore, plaintiff prays for relief and damages as hereinafter stated.

9 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**  
10 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

11           58. Plaintiff repleads and incorporates by reference as if fully set forth again herein,  
12 the allegations contained in paragraphs 1 through 57 of this complaint.  
13

14           59. Ohio Administrative Code (hereinafter "O.A.C.") § 4101:1-11 controls the design  
15 and construction of facilities for accessibility for individuals with disabilities.

16           60. Sites, buildings, structures, facilities, elements and spaces, temporary or  
17 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.

18           61. D MART and the business therein, being a site, building, structure, facility,  
19 element or space, committed an unlawful act pursuant to O.A.C. § 1104.1 by failing to provide at  
20 least one accessible route to the D MART building entrance.  
21

22           62. As the D MART provides between 1 to 25 parking spaces, Defendants are  
23 required to have a minimum of one accessible parking space pursuant to O.A.C. § 1106.1.

24           63. D MART committed an unlawful act pursuant to O.A.C. § 1106.1 by failing to  
25 provide any accessible parking spaces, which are to include applicable signage. In violation of  
26 O.A.C. § 1106.6, Defendants failed to provide any accessible parking spaces on the shortest  
27 accessible route of travel from adjacent parking to an accessible building entrance.  
28

1           64. Defendants' violations denied plaintiff SPENCER NEAL full enjoyment of  
2 its accommodations, advantages, facilities, or privileges, whereas, plaintiff SPENCER NEAL  
3 had great difficulty entering the property due to extensive barriers for patrons confined to  
4 wheelchairs on the accessible route.

5  
6           65. As a result of these violations, plaintiff SPENCER NEAL is entitled to  
7 compensatory and punitive damages, and attorney fees and costs, in an amount to be determined  
8 at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction requiring  
9 Defendants to allow full and equal enjoyment of its goods, services, facilities, privileges, and  
10 advantages to disabled persons.

11  
12           66. A separate act in violation of Ohio Administrative Code § 4101:1-11, *et seq.* has  
13 been committed each day that Defendants act or fail to act and/or knowingly and willfully  
14 fail and refuse to make accessible its site for physically disabled persons presently existing at the  
15 subject D MART. Plaintiff has been denied full and equal access on an ongoing basis since the  
16 date of plaintiff SPENCER NEAL' first visit. As a legal result, plaintiff is entitled to seek  
17 appropriate relief, such as damages.

18  
19           67. As a result of D MART's accessibility violations, plaintiff  
20 suffered violations of his civil rights, as well as suffering from injury, shame, humiliation,  
21 embarrassment, frustration, anger, chagrin, disappointment and worry, all of which are  
22 expectedly and naturally associated with a denial of access to a person with physical disabilities,  
23 all to plaintiff's damages as hereinafter stated.

24  
25           68. Plaintiff has been damaged by Defendants' wrongful conduct and seeks relief  
26 for violation of the O.A.C., including actual and special damages according to proof.

27           69. As a result of Defendants' acts and omissions in this regard, plaintiff has been  
28

1 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and  
2 enforce the provisions of the law protecting access for persons with physical disabilities and  
3 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek  
4 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the  
5 prevailing party.  
6

7 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

8 **PRAYER:**

9 Wherefore, plaintiff prays that this court grant relief and damages as follows:

10 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
11 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
12 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

13 1. For injunctive relief, compelling Defendants to make D MART, located at 2424  
14 Massillon Rd., Akron, Ohio, readily accessible to and usable by individuals with disabilities; and  
15 to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to  
16 afford full access to the goods, services, facilities, privileges, advantages and accommodations  
17 being offered.  
18

19 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed  
20 the prevailing party; and  
21

22 3. For such other and further relief as the court may deem proper.

23 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
24 **EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, et**  
**seq.**

25 4. For injunctive relief, compelling Defendants to make D MART, located at 2424  
26 Massillon Rd., Akron, Ohio, readily accessible to and usable by individuals with disabilities, per  
27 state law.  
28



1           5.       General and compensatory damages according to proof;

2           6.       All damages for each day, from the inception of the filing of this complaint, on  
3 which Defendants have failed to remove barriers which denied plaintiff and other persons with  
4 disabilities full and equal access.

5  
6           7.       Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed  
7 the prevailing party;

8           8.       Punitive damages, pursuant to Ohio Revised Code § 2315.21;

9           9.       For all costs of suit;

10          10.      Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

11          11.      Such other and further relief as the court may deem just and proper.

12  
13  
14 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND**  
15 **EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE §**  
**4101:1-11, et seq.**

16          12.      For injunctive relief, compelling Defendants to make D MART, located at 2424  
17 Massillon Rd., Akron, Ohio, readily accessible to and usable by individuals with disabilities, per  
18 state law.

19          13.      General and compensatory damages according to proof;

20          14.      All damages for each day, from the inception of the filing of this complaint, on  
21 which Defendants have failed to remove barriers which denied plaintiff and other persons with  
22 disabilities full and equal access.

23  
24          15.      Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed  
25 the prevailing party;

26          16.      Punitive damages, pursuant to Ohio Revised Code § 2315.21;

27          17.      For all costs of suit;

1  
2 18. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

3 19. Such other and further relief as the court may deem just and proper.

4  
5 /s/ COLIN G. MEEKER

6 COLIN G. MEEKER (Ohio Bar No. 0092980)  
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10 Attorney for Plaintiff SPENCER NEAL

11  
12  
13 **DEMAND FOR JURY TRIAL**

14  
15 Plaintiff hereby demands a jury trial for all claims for which a jury is permitted.

16 /s/ COLIN G. MEEKER

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21 Attorney for Plaintiff SPENCER NEAL  
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